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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 04-19
Table of Allotments,) RM-10845
FM Broadcast Stations.)
(Talladega and Munford, Alabama))
)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 27, 2005

Released: July 29, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making* ("Notice")¹ issued in response to a Petition for Rule Making filed by Jacobs Broadcast Group Inc., licensee of Station WTDR(FM) ("WTDR"), Talladega, Alabama ("Petitioner"). Petitioner filed comments and reply comments. Calhoun Communications ("Calhoun") filed comments, and an Errata and supplement thereto. In addition, the staff directed a "Request for Supplemental Information" ("RSI") to Petitioner, to which Petitioner submitted a Response, and Calhoun submitted comments and reply comments.² Petitioner filed an Opposition to Calhoun's request for leave to file reply comments and a contingent response to Calhoun's reply comments. For the reasons stated below, we grant Petitioner's rulemaking petition.

2. At the request of Petitioner, the *Notice* proposed that Channel 224A, Station WTDR be reallocated to Munford, Alabama, and that Station WTDR's license be modified to reflect the change of community.³ This reallocation of Channel 224A to Munford would provide Munford with its first local aural transmission service. Petitioner made the foregoing reallocation request pursuant to Section 1.420(i) of the Commission's rules,⁴ which permits the modification of a station's authorization to specify a new

¹ *Talladega and Munford, Alabama*, 19 FCC Rcd 1881 (MB 2004).

² Calhoun also filed a request for leave to submit its Reply. In the interest of providing a full and complete record, this request is granted. We also allow Petitioner to file its Response to Calhoun's Reply Comments.

³ Petitioner's reallocation proposal does not involve a transmitter site change. Further, the grandfathered co-channel short spacing between Station WAFN(FM), Arab, Alabama and Station WTDR, can continue pursuant to Commission policy first articulated in *Newman and Peachtree City, Georgia*, 7 FCC 6307 (1992) ("Newman"). In *Newman*, the Commission stated that a station grandfathered as a pre-1964 short-spaced station should receive the same opportunity to change its community of license as other stations authorized in conformity with the Rules. The Commission stated that it would consider waiving the strict application of Section 73.207 of the Rules provided no technical change is proposed by the grandfathered station, no new short spacing is created, no existing short spacings are exacerbated and the potential for interference between the currently short spaced stations is not increased.

⁴ 47 C.F.R. § 1.420(i).

community of license without affording other interested parties an opportunity to file competing expressions of interest.⁵ In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities.⁶

3. Calhoun argued in initial comments that Petitioner could locate transmission facilities at a site that would serve most of the Anniston Urbanized Area. Had Petitioner proposed such a site in its petition for rule making in this proceeding, we would have required a showing pursuant to *Faye and Richard Tuck*⁷ to demonstrate that Munford is independent of the Anniston Urbanized area and therefore entitled to consideration as a first local service under priority (3) of the FM allotment priorities. If Petitioner becomes a Munford station and then proposes to relocate its transmitter site to a location that would serve more than 50 percent of the Anniston Urbanized Area, the two-step procedure of first proposing only a change in community of license and subsequently proposing the relocation of the transmitter site would effectively circumvent a specific Commission requirement that the licensee submit a *Tuck* showing. In order to avoid any such perception, the staff issued the RSI, which required Petitioner to submit a *Tuck* showing at the allotment stage of the license modification process to demonstrate that Munford is independent of the Anniston Urbanized area and therefore entitled to consideration as a first local service, regardless of the location of its transmitter site.

4. Under *Tuck*, we examine such proposals by considering three criteria: (1) the extent to which the station will provide service to the entire Urbanized Area, (2) the size and proximity of the proposed community to the central city of the urbanized area, and (3) the interdependence of the proposed community to the urbanized area.⁸ The interdependence factor is the most important criteria

⁵ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

⁶ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

⁷ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("Tuck"); see also *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) (a reallocation proposal requires a showing pursuant to *Tuck* when the proposed 70 dBu contour will encompass more than 50 percent of an Urbanized Area).

⁸ In *Tuck*, the Commission set forth eight factors in assessing the independence of a specified community: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own weekly newspaper or other media that cover the community's local needs and interests; (3) whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facility and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries. 3 FCC Rcd at 5378. The Commission has considered a community as independent when a majority of these factors demonstrate that the community is distinct from the urbanized area. See *Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (M.M.Bur. 1996).

considered in making an allotment decision involving the proposed reallocation of a station to an urbanized area. Petitioner's 70 dBu contour would cover about 10.25 percent of the Anniston Urbanized Area. Munford is about 18.2 kilometers (11.3 miles) away from Anniston and Munford's 2000 U.S. Census population of 2,446 is 10 percent of the population of Anniston (2000 U. S. Census of 24,276). These figures are similar to those of other suburban communities granted a first local preference.⁹

5. Under criterion (3), which measures the relative independence of the suburban community (Munford) from the Anniston Urbanized Area, a majority of the eight *Tuck* factors demonstrate Munford's independence from the Anniston Urbanized Area. With respect to *Tuck* factor 1, the extent to which community residents work in the larger metropolitan area, rather than the specified community, 2000 U.S. Census data indicates that about 14.6 percent of Munford's employed residents work in Munford.¹⁰ This percentage is significant and justifies a favorable finding under *Tuck* factor 1.¹¹ Evidence proffered pursuant to *Tuck* factor 3, whether the smaller community's leaders and residents perceive Munford as being separate from the Anniston Urbanized area, clearly supports a favorable finding for Munford under this factor. Munford is currently an incorporated municipality located within Talladega County. Petitioner explains that Munford was officially incorporated in 2002 to maintain its separation from the city of Oxford, Alabama, at a time when Oxford was expanding so rapidly that the citizens of Munford feared Oxford might attempt to annex Munford. Munford must receive a favorable finding under *Tuck* factor 4 because it has its own local government and elected officials. Nevertheless, pursuant to *Tuck* factor 8, Munford's schools and police protection are provided by the County of Talladega. Although Munford provides its own volunteer fire department and water department, it is dependent upon Talladega County for some services, although it is not dependent upon Anniston or the Anniston Urbanized Area for community services. It is important to be aware that Anniston is located in Calhoun County, not Talladega County. In this light, Munford receives some credit under *Tuck* factor 8.

6. Under *Tuck* factor 5, Munford earns a favorable finding because it has its own zip code. Under *Tuck* factor 6, Munford has numerous commercial establishments and other facilities, including several businesses that use "Munford" in their names, as well as one health clinic¹² and several churches. Thus, Munford receives a favorable finding under *Tuck* factor 6. Insofar as *Tuck* factors 2

⁹ See, e.g., *Chillicothe and Ashville, Ohio*, 18 FCC Rcd 22410 (MB 2003) (smaller community had less than one percent of the central city's population).

¹⁰ This figure is for the Munford Census Designated Place ("CDP") which the 2000 U.S. Census lists as having a population of 2,446 persons. Calhoun asserts that although Munford was incorporated in 2002, the incorporated town has about 1,500 persons and is a smaller entity than the prior Munford CDP. Contrary to Calhoun's speculative arguments, there is no basis in the record of this proceeding to conclude that the percentage of persons working in Munford, as opposed to other places, would be significantly different than the previous percentage for the Munford CDP.

¹¹ The Commission has found that 16 percent of a community's workforce employed in the community is sufficient to support a favorable finding under *Tuck* factor 1. See *Anniston and Ashland, Alabama, and College Park, Georgia, et al.*, 16 FCC Rcd 3411 (MMB 2001).

¹² We believe Calhoun is correct that there is one, as opposed to two, health clinics in Munford.

and 7 are concerned, Munford receives some credit because Munford residents can subscribe to a regional newspaper entitled The Daily Home for coverage of local events and public affairs. This publication also provides advertisers with a means of reaching consumers in Munford. Thus, under *Tuck* factors 1, 3, 4, 5, and 6, Munford deserves favorable findings. In conclusion, Munford deserves favorable findings for a majority of the *Tuck* factors and therefore deserves to be awarded a preference for providing the first local service to Munford pursuant to priority (3) of the FM allotment priorities.

7. We find that reallocating Channel 224A, Station WTDR from Talladega to Munford would result in a preferential arrangement of allotments under the FM allotment priorities because Munford would receive its first local aural transmission service. Thus, under the FM allotment priorities, retaining the allotment of Channel 224A at Talladega only satisfies priority (4) (other public interest matters), while the reallocation of Channel 224A to Munford will satisfy priority (3) (first local service). We also observe that the reallocation of Channel 224A to Munford would not deprive Talladega of its sole local aural transmission outlet because Talladega would continue to be served by AM Station WNUZ. Therefore, in accordance with the provisions of Section 1.420 (i) of the Commission's rules,¹³ we will modify the license of Station WTDR to specify operation on Channel 224A at Munford, Alabama.

8. Consistent with the technical requirements of the Commission's rules, Channel 224A can be allotted to Munford, Alabama, utilizing coordinates of 33-29-12 NL and 85-59-15 WL, with a site restriction of 5.9 kilometers (3.6 miles) southwest of Munford.

9. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

10. Accordingly, pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective September 12, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Munford, Alabama	224A
Talladega, Alabama	-----

11. IT IS FURTHER ORDERED, that the Petition for Rule Making filed by Jacobs Broadcasting Group, Inc. IS GRANTED.

12. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Jacobs Broadcast Group, Inc., for FM Station WTDR, Talladega, Alabama, IS MODIFIED to specify operation on Channel 224A at Munford, Alabama, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the

¹³ 47 C.F.R. § 1.420(i).

Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

13. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (3)(l), Jacobs Broadcast Group, Inc., licensee of FM Station WTDR, is required to submit a rule making fee in addition to the fee required for the application to effectuate the change in community of license for FM Station WTDR, Channel 224A, from Talladega, Alabama, to Munford, Alabama, at the time it submits its Form 301 application.

14. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

15. For further information concerning the above, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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